

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CYNTHIA LYNN GOGUEN
a.k.a. CYNTHIA L. MONTANUS
5161 Carter Avenue
San Jose, CA 95118

Registered Nurse License No. 271500
Public Health Nurse Certificate No. 23773

Respondent

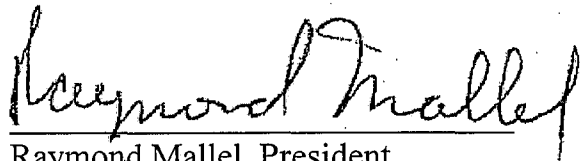
Case No. 2011-875

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **July 30, 2012.**

IT IS SO ORDERED **July 30, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 CAROL ROMEO
Deputy Attorney General
4 State Bar No. 124910
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-875

13 **CYNTHIA LYNN GOGUEN AKA**
14 **CYNTHIA L. MONTANUS**
15 **5161 Carter Avenue**
16 **San Jose, CA 95118**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17 **Registered Nurse License No. 271500**
18 **Public Health Nurse Certificate No. 23773**

19 Respondent.

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
21 proceeding that the following matters are true:

22 PARTIES

23 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
24 Registered Nursing. She brought this action solely in her official capacity and is represented in
25 this matter by Kamala D. Harris, Attorney General of the State of California, by Carol Romeo,
26 Deputy Attorney General.

27 2. Cynthia Lynn Goguen aka Cynthia L. Montanus (Respondent) is represented in this
28 proceeding by attorney Christopher Parkhurst, whose address is whose address is Christopher
Parkhurst Law Offices, 1007 7th Street, Suite 302, Sacramento, California 95814.

1 3. On or about August 31, 1976, the Board of Registered Nursing issued Registered
2 Nurse License No. 271500 to Cynthia Lynn Goguen aka Cynthia L. Montanus (Respondent). The
3 Registered Nurse License was in full force and effect at all times relevant to the charges brought
4 in Accusation No. 2011-875 and will expire on September 30, 2012, unless renewed.

5 4. On or about November 26, 1976, the Board of Registered Nursing issued Public
6 Health Nurse Certificate No. 23773 to Cynthia Lynn Goguen aka Cynthia L. Montanus
7 (Respondent). The Public Health Nurse Certificate was in full force and effect at all times relevant
8 to the charges brought in Accusation No. 2011-875 and will expire on September 30, 2012, unless
9 renewed.

10 JURISDICTION

11 5. Accusation No. 2011-875 was filed before the Board of Registered Nursing (Board),
12 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
13 and all other statutorily required documents were properly served on Respondent on April 25,
14 2011. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of
15 Accusation No. 2011-875 is attached as Exhibit A and incorporated by reference.

16 ADVISEMENT AND WAIVERS

17 6. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Accusation No. 2011-875. Respondent also has carefully read, fully
19 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
20 Order.

21 7. Respondent is fully aware of her legal rights in this matter, including the right to a
22 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
23 her own expense; the right to confront and cross-examine the witnesses against her; the right to
24 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
25 compel the attendance of witnesses and the production of documents; the right to reconsideration
26 and court review of an adverse decision; and all other rights accorded by the California
27 Administrative Procedure Act and other applicable laws.

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8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 2011-875, agrees that cause exists for discipline and hereby surrenders her Registered Nurse License No. 271500 for the Board's formal acceptance.

10. Respondent admits the truth of each and every charge and allegation in Accusation No. 2011-875, agrees that cause exists for discipline and hereby surrenders her Public Health Nurse Certificate No. 23773 for the Board's formal acceptance.

11. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Registered Nurse License and Public Health Nurse Certificate without further process.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
3 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
4 executed by an authorized representative of each of the parties.

5 15 In consideration of the foregoing admissions and stipulations, the parties agree that
6 the Board may, without further notice or formal proceeding, issue and enter the following Order:

7 **ORDER**

8 IT IS HEREBY ORDERED that Registered Nurse License No. 271500, and Public Health
9 Nurse Certificate No. 23773, issued to Respondent Cynthia Lynn Goguen aka Cynthia L.
10 Montanus, are surrendered and accepted by the Board of Registered Nursing.

11 1. The surrender of Respondent's Registered Nurse License and Public Health Nurse
12 Certificate and the acceptance of the surrendered licenses by the Board shall constitute the
13 imposition of discipline against Respondent. This stipulation constitutes a record of the discipline
14 and shall become a part of Respondent's license history with the Board of Registered Nursing.

15 2. Respondent shall lose all rights and privileges as a registered nurse and public health
16 nurse in California as of the effective date of the Board's Decision and Order.

17 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
18 issued, her wall certificates on or before the effective date of the Decision and Order.

19 4. If she ever applies for licensure or petitions for reinstatement in the State of
20 California, the Board shall treat it as a petition for reinstatement. Respondent must comply with
21 all the laws, regulations and procedures for licensure in effect at the time the application or
22 petition is filed, and all of the charges and allegations contained in Accusation No. 2011-875 shall
23 be deemed to be true, correct and admitted by Respondent when the Board determines whether to
24 grant or deny the application or petition.

25 5. If and when Respondent's license is reinstated, she shall pay to the Board costs
26 associated with its investigation and enforcement pursuant to Business and Professions Code
27 section 125.3 in the amount of \$2,275.00. Respondent shall be permitted to pay these costs in a
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1 payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the
2 Board from reducing the amount of cost recovery upon reinstatement of the license.

3 6. If Respondent should ever apply or reapply for a new license or certification, or
4 petition for reinstatement of a license, by any other health care licensing agency in the State of
5 California, all of the charges and allegations contained in Accusation, No. 2011-875 shall be
6 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
7 Issues or any other proceeding seeking to deny or restrict licensure.

8 7. Respondent shall not apply for licensure or petition for reinstatement for one (1) year
9 from the effective date of the Board of Registered Nursing's Decision and Order.

10 ACCEPTANCE

11 I have carefully read the above Stipulated Surrender of License and Order and have fully
12 discussed it with my attorney, Christopher Parkhurst. I understand the stipulation and the effect it
13 will have on my Registered Nurse License, and Public Health Nurse Certificate. I enter into this
14 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
15 be bound by the Decision and Order of the Board of Registered Nursing.

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17 DATED:

Dec 31, 2011

Cynthia L. Goguen AKA
Cynthia L. Montanus
CYNTHIA LYNN GOGUEN
AKA CYNTHIA L. MONTANUS
Respondent

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19
20 I have read and fully discussed with Respondent Cynthia Lynn Goguen aka Cynthia L.
21 Montanus the terms and conditions and other matters contained in this Stipulated Surrender of
22 License and Order. I approve its form and content.

23 DATED:

1-5-2012

Chris Parkhurst
CHRISTOPHER PARKHURST
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 1/12/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Carol Romeo

CAROL ROMEO
Deputy Attorney General
Attorneys for Complainant

SF2011900211
Stipulation.rtf

Exhibit A

Accusation No. 2011-875

1 KAMALA D. HARRIS
2 Attorney General of California
DIANN SOKOLOFF

3 Supervising Deputy Attorney General
CAROL ROMEO
4 Deputy Attorney General
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7 Facsimile: (510) 622-2270
Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No.

2011-876

12 **CYNTHIA LYNN GOGUEN**
13 **A.K.A. CYNTHIA L. MONTANUS**
14 **5161 Carter Avenue**
San Jose, CA 95118

A C C U S A T I O N

15 **Registered Nurse License No. 271500**
Public Health Nurse License No. 23773

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about August 31, 1976, the Board of Registered Nursing issued Registered
24 Nurse License Number 271500 to Cynthia Lynn Goguen, also known as Cynthia L. Montanus
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
26 the charges brought in this Accusation and will expire on September 30, 2012, unless renewed.

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1 3. On or about November 26, 1976, the Board of Registered Nursing issued Public
2 Health Nurse License Number 23773 to Cynthia Lynn Goguen, also known as Cynthia L.

3 Montanus (Respondent). The Public Health Nurse License was in full force and effect at all times
4 relevant to the charges brought in this Accusation and will expire on September 30, 2012, unless
5 renewed.

6 JURISDICTION

7 4. This Accusation is brought before the Board of Registered Nursing (Board),
8 Department of Consumer Affairs, under the authority of the following laws. All section
9 references are to the Business and Professions Code unless otherwise indicated.

10 5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
11 that the Board may discipline any licensee, including a licensee holding a temporary or an
12 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
13 Nursing Practice Act.

14 6. Section 118, subdivision (b), of the Code provides that the
15 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
16 jurisdiction to proceed with a disciplinary action during the period within which the license may
17 be renewed, restored, reissued or reinstated.

18 7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
19 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
20 licensee or to render a decision imposing discipline on the license. Under section 2811,
21 subdivision (b), of the Code, the Board may renew an expired license at any time within eight
22 years after the expiration.

23 STATUTORY PROVISIONS

24 8. Section 2761 of the Code states, in pertinent part:

25 "The board may take disciplinary action against a certified or licensed nurse or deny an
26 application for a certificate or license for any of the following:

27 "(a) Unprofessional conduct, which includes, but is not limited to, the following:
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"(f) Conviction of a felony or of any offense substantially related to the qualifications,

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functions, and duties of a registered nurse, in which event the record of the conviction shall be

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conclusive evidence thereof."

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9. Section 2762 of the Code states, in pertinent part, that "[i]n addition to other acts

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constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act],

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it is unprofessional conduct for a person licensed under this chapter to do any of the following:

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...

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"(b) Use any controlled substance as defined in Division 10 (commencing with Section

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11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in

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Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to

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himself or herself, any other person, or the public or to the extent that such use impairs his or her

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ability to conduct with safety to the public the practice authorized by his or her license.

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"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-

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administration of any of the substances described in subdivisions (a) and (b) of this section, or the

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possession of, or falsification of a record pertaining to, the substances described in subdivision (a)

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of this section, in which event the record of the conviction is conclusive evidence thereof."

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10. Section 490 of the Code provides, in pertinent part, that a board may suspend or

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revoke a license on the ground that the licensee has been convicted of a crime substantially

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related to the qualifications, functions, or duties of the business or profession for which the

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license was issued.

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11. California Code of Regulations, Title 16, section 1444 states, in pertinent part:

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"A conviction or act shall be considered to be substantially related to the qualifications,

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functions or duties of a registered nurse if to a substantial degree it evidences the present or

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potential unfitness of a registered nurse to practice in a manner consistent with the public health,

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safety, or welfare. Such convictions or acts shall include but not be limited to the following:

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"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINARY ACTION

(Unprofessional Conduct)
(Bus. & Prof. Code §2761(a))

13. Respondent has subjected her Registered Nurse License and Public Health Nurse License to disciplinary action for unprofessional conduct under Code section 2761, subdivision (a). The circumstances are as follows:

a. On or about June 10, 2007, in Los Gatos, California, Respondent was pulled over by a California Highway Patrol (CHP) police officer after the officer observed the Mazda vehicle Respondent was driving exceeding the speed limit and unnecessarily swerving into a traffic lane. The officer approached Respondent and immediately smelled the odor of an alcoholic beverage coming from within the Mazda. Respondent told the officer that she had a temporary driver's license pending the outcome of a hearing from her previous arrest in April 2007 for misdemeanor DUI and misdemeanor hit and run. The officer asked Respondent to step out of her vehicle. He smelled alcohol on her breath. He noticed that her eyes were red and watery, her speech was slurred, and she was unsteady on her feet. Respondent performed the field sobriety tests (FST's) with impaired coordination. Respondent refused to perform a Preliminary Alcohol Screening Test (P.A.S.). Based upon Respondent's objective symptoms of alcohol intoxication, her poor performance on the FST's, her admission to having consumed alcohol, and his observations of her

1 driving, the officer concluded that Respondent was driving under the influence of alcohol, in
2 violation of Vehicle Code section 23152, subdivision (a). After she was arrested, Respondent
3 submitted to a test of her blood alcohol content (BAC) by the Santa Clara County Laboratory.
4 Respondent's BAC was .22 percent.

5 SECOND CAUSE FOR DISCIPLINARY ACTION

6 (Conviction)

7 (Bus. & Prof. Code §§ 490 and 2761(f))

8 14. Respondent has subjected her Registered Nurse License and Public Health Nurse
9 License to disciplinary action under Code sections 490 and 2761, subdivision (f), in that she was
10 convicted of a crime substantially related to the qualifications, functions, or duties of a registered
11 nurse and public health nurse. Specifically, on or about November 14, 2007, in the Superior
12 Court of California, County of Santa Clara, Case Number CC771962, entitled *The People of the*
13 *State of California v. Cynthia Lynn Goguen*, Respondent was convicted by her plea of nolo
14 contendere of violating Vehicle Code section 23152, subdivision (b), (driving with a blood
15 alcohol level or .08 percent or more), a misdemeanor. Respondent was placed on probation for 3
16 years upon terms and conditions, which included, but were not limited to, serving 11 days in
17 county jail, and enrolling in a First Offender DUI Program within 30 days.

18 THIRD CAUSE FOR DISCIPLINARY ACTION

19 (Unprofessional Conduct)

20 (Bus. & Prof. Code §2761(a))

21 15. Respondent has subjected her Registered Nurse License and Public Health Nurse
22 License to disciplinary action for unprofessional conduct under Code section 2761, subdivision
23 (a). The circumstances are as follows:

24 a. On or about April 24, 2007, in San Jose, California, a California Highway Patrol
25 (CHP) officer responded to a call of a hit and run collision, and later located Respondent at her
26 residence. Respondent admitted that she was the driver of the Mazda involved in the hit and run
27 collision, and that she left the scene because she "did not feel safe." The CHP officer asked
28 Respondent to step outside of her residence and meet him by his police vehicle. Respondent
protested, lost her balance, and used both of her arms to grab the side of her house. Respondent
displayed increasingly hostile behavior and while she was walking towards the police vehicle, she

1 had trouble maintaining her balance. The CHP officer smelled a strong odor of an alcoholic
2 beverage coming from her breath and noticed that her speech was slow and slurred. Respondent
3 admitted to consuming an alcoholic beverage earlier in the evening. Respondent refused to
4 perform any FST's, and refused to submit to a P.A.S. Based upon Respondent's admission to
5 drinking an alcoholic beverage prior to driving and her objective symptoms of alcohol
6 intoxication, the officer concluded that Respondent was driving under the influence of alcohol.
7 Respondent was arrested for violating Vehicle Code section 23152, subdivision (a).

8 FOURTH CAUSE FOR DISCIPLINARY ACTION

(Conviction)

9 (Bus. & Prof. Code §§ 490 and 2761(f))

10 16. Respondent has subjected her Registered Nurse License and Public Health Nurse
11 License to disciplinary action under Code sections 490 in that she was convicted of a crime
12 substantially related to the qualifications, functions, or duties of a registered nurse and public
13 health nurse. Specifically, on or about October 12, 2007, in the Superior Court of California,
14 County of Santa Clara, Case Number CC767664, entitled *The People of the State of California v.*
15 *Cynthia Lynn Goguen*, Respondent was convicted by a jury verdict of violating Vehicle Code
16 section 20002, subdivision (a), (hit and run: property damage), a misdemeanor. Respondent was
17 placed on probation for 2 years upon terms and conditions, which included not driving without a
18 valid driver's license and insurance.

19 FIFTH CAUSE FOR DISCIPLINARY ACTION

(Conviction of Crime Involving Alcohol)

20 (Bus. & Prof. Code § 2762(c))

21 17. The allegations of paragraphs 13 and 14 are realleged and incorporated by reference
22 as if fully set forth.

23 18. Respondent has subjected her Registered Nurse License and Public Health Nurse
24 License to disciplinary action under Code section 2761, subdivision (a), on the grounds of
25 unprofessional conduct, as defined in Code section 2762, subdivision (c). Specifically, on or

26 about November 14, 2007, Respondent was convicted of a crime involving the consumption of
27 alcoholic beverages, as set forth in paragraph 13 and 14, above.

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SIXTH CAUSE FOR DISCIPLINARY ACTION
(Use of Alcohol to a Dangerous Extent)
(Bus. & Prof. Code § 2762(b))

19. The allegations of paragraphs 13 and 14 are realleged and incorporated by reference as if fully set forth.

20. Respondent has subjected her Registered Nurse License and Public Health Nurse License to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b). Specifically, on or about June 10, 2007, Respondent used, and was under the influence of, alcoholic beverages to an extent dangerous or injurious to herself and the public, as set forth in paragraphs 13 and 14, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

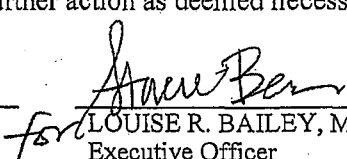
1. Revoking or suspending Registered Nurse License Number 271500, issued to Cynthia Lynn Goguen, also known as Cynthia L. Montanus (Respondent);

2. Revoking or suspending Public Health Nurse License Number 23773, issued to Respondent;

3. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

4. Taking such other and further action as deemed necessary and proper.

DATED: 4/28/11

for 
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2011900211
CR: 04/20/11